In the High Court of Judicature at Madras

Dated: 22/09/2004

Coram

The Honourable Mr.Justice V.KANAGARAJ

Writ Petition No.13969 of 1997 and Writ Petition No. 13974 of 1997

The Management of Cheran
Transport Corporation Ltd.
37, Mettupalayam Roadways
Coimbatore 43
by its Managing Director .. Petitioner in
both the W.Ps.
-Vs-

1. The Presiding Officer
Labour Court
Coimbatore

2. A.Rajamani .. Respondents in
both the W.Ps.

For petitioner : Mrs. Narmadha Sampath

For respondents : Mr.D.Rajagopal for R2

:O R D E R
The petitioner filed the above writ petitions praying to issue a Writ of Certiorari, to call for the records of the first respondent in his Award dated 16.11.1996 respectively made in I.D.No.130 of 1996 and C.P.No.469 of 1996, and quash the same.

2. The case of the petitioner-management is that the second respondent joined the services of the petitioner-Corporation as Driver on 0 6.08.1993 and immediately thereafter, within 10 days, on 15.08.1993, he was involved the vehicle in a major fatal accident in which the victim was an old lady who died on the spot; that since the accident occurred only on account of the rash and negligent driving of the vehicle by the second respondent he was discharged from service by an order dated 16.02.1994 retrospectively with effects from 16.08.1993, on the ground of unsuitability since he had worked only for 10 days; that no enquiry was held prior to the discharge; that against the said order dated 16.02.1994, the second respondent raised an Industrial Dispute on failure of conciliation and filed a claim statement before the first respondent which was taken on the file as I.D.No.130 of 1 996; that the petitioner management filed a detailed counter therein; that the first respondent passed an award on 16.11.1996 directing the petitioner to reinstate the second respondent without back wages but with continuity of

service; that the second respondent has also filed a petition in C.P.No.468 of 1996 under Section 33(c) of the Industrial Disputes Act praying

for payment of subsistence allowance at the rate of 50% for the period from 16.8.1993 to 15.11.1993, at the rate of 75% from 16.11.1993 to 15.2.1994 and for payment of salary for the period from 1.8.1993 to 15.8.1993 ; that by order dated 16.11.1996 the Labour Court has computed a sum of Rs.8514.50 toward subsistence allowance and salary. It is only testifying the validity of both the award as well as claim petition, the petitioner has filed the above writ petitions praying for the reliefs extracted supra.

3. During arguments, learned counsel appearing on behalf of the petitioner management would submit that the second respondent was discharged from service only on the ground of unsuitability under Clause 14 (d) of the Corporation's Standing Order, since the occurrence took place on account of the rash and negligent driving of the second respondent-driver, no inquiry need be necessary; that the act of the second respondent-driver caused grave damage to the Corporation; that further, the Labour Court has failed to consider the submissions made by the petitioner-management in the counter to the effect that no enquiry was held and evidence could be let in to substantiate the order of discharge; that the Labour Court ought not to have relied upon the acquittal of the second respondent in the criminal proceedings to grant the relief of reinstatement; that the Labour Court failed to notice that the standard of proof in a criminal case is different from the standard of proof in a domestic enquiry; that with regard to disciplinary proceedings against an employee, the standard of proof is preponderance of probability whereas in a criminal proceeding the standard of proof is beyond reasonable doubt. Further learned counsel would submit that the doctrine of res ipsa loquitor would apply to the fact of the present case.

4. At this juncture, the learned counsel would cite two judgments reported in
(i) 2004 (1)LLN 572 (M.Chella Thambi v Presiding Officer, Labour Court, Madurai and Mangement, Pandian Roadways Corporation, Madurai)
(ii) 2003 (3) LLN 705 (MANAGEMENT OF THIRUVALLURVAR TRANSPORT CORPORATION LTD.MADRAS v. K.AYYAVU AND THE PRESIDING OFFICER, LABOUR COURT, TIRUVELVELI)

5. In the first judgment cited above it has been held:
"In so far as such conduct of the drivers of a public transport corporation are concerned, time and again, it has been repeatedly held that the doctrine of res ipsa loquitor would apply, that is, the accident speaks for itself. In other words, when it is in the exclusive knowledge of the driver, who caused the accident, it is but proper that he discharge the onus, namely, that the accident did not happen due to his rash and negligent driving, but due to various other reasons not attributable to him. In fact, in the Division Bench Judgment cited by the learned counsel for the second respondent, reference has been made to three decision of the Hon'ble Supreme Court reporte in AIR 1977 SC 1735 (PUSHBABAI PARSHOTTAM UDESHI V. RANJIT GINNING AND PRESSING COMPANY, PRIVATE LTD., (AIR 1987 SC 861 (STATE OF

KARNATAKA v KRISHNA RAJU and AIR 2000 SC 1677 (DALBIR SINGH v. STATE OF HARYANA. -In the judgment reported in AIR 1986 SC 861, State of Karnataka v. Krishna Raju, the Hon'ble Supreme

Court has cautioned to the effect that where a driver of a public transport corporation is found to have caused a fatal accident, the same has to be looked at with certain amount of seriousness, since the public safety and convenience is paramount, the Court should not fall a prey to the plea of misplaced sympathy. The Hon'ble Supreme Court has also held that award of punishment has to be weighed keeping in view the interest of the public at large and the travelling passengers and the disciplinary actions are taken more as preventive measure so that it may work as an effective warning against other drivers to behave befitting their duties and maintaining due discipline in the establishment."

6. In the second judgment cited above, it has been held:
"Thus from a comparison in of the reasoning of the criminal Court with the reasoning of the Labour Court it could be seen that it is no possible to pin-point us to how the accident happened. There are differing versions. But the fact remains that the vehicle was being driven by the

first respondent at a break neck speed. This is a clear case where the principle of 'res ipsa loquitor' comes into play. The first respondent has had a previous history. He had caused a fatal accident earlier and we are informed that after reinstatement now he had again caused yet another fatal accident. His score is now three. So far as the earlier fatal accident is concerned, the first respondent had been punished with loss of increment. In my view, that was wholly inadequate. No doubt, I am not sitting in Judgment over what had happened on the earlier occasion. So far as the present award

is concerned, the Labour Court had totally misapplied the principles of law. It had not made out any plausible reason for disturbing the finding reached by the authorities with regard to the cause of accident."

7. With regard to the order in C.P.No.468 of 1996 which is impugned in W.P.No.13974 of 1997, learned counsel appearing on behalf of the petitioner-management would vehemently argue that the claim of subsistence allowance is not maintainable since there is a Special Enactment namely the Tamil Nadu Industrial Establishment

(Payment of Subsistence Allowance to Workmen) Act; that this Court has taken the view that inasmuch as an act confers some substantive rights on a workman to receive the allowance and also creates an elaborate machinery to enforce the said right, recourse should only have to be held to the provisions of that Act and the application under Section 3-C(2) of the Industrial Disputes Act, would not be maintainable. On such arguments, he would pray for the relief extracted supra.

8. During arguments, learned counsel appearing on behalf of the second respondent-workman would submit that the discharge of the second

respondent from service is not in accordance with law and no opportunity was given to him to submit his defence; that further no domestic enquiry was conducted in the manner known to law and no charges were framed and that the Labour Court had rightly come to the conclusion based on the acquittal of the second respondent before the Criminal Court.

9. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, this Court is of the view that

it is an admitted fact on the part of the petitioner-management and the second respondent-workman as well, that no proper charges were framed against the delinquent so as to show whether the delinquent has committed the delinquencies charged against him and, therefore, just on the face value of a decision of the criminal Court decisions have been arrived by the disciplinary authority against which the delinquent had gone to the Labour Court and the Labour Court also though makes a mention of the non-conduct of proper enquiry it has not taken serious note of the same and, therefore, it is only desirable on the part of this Court to order for a proper enquiry in the manner required under law with such opportunities for both parties to exhaust their remedies so as to give a finding based on such evidence made available on record and to render a decision on merits and in accordance with law. Since a long time has been elapsed in the exercise of having come over to file the above the writ petitions, it has further become necessary on the part of this Court to issue directions to the petitioner management to complete the enquiry within a time frame and hence the following Order.

In result,

(i) both the above writ petitions stand allowed;

(ii) the subject is remanded back to the Disciplinary Authority that is the petitioner-Corporation for a proper enquiry to be held in the manner required under law with such opportunities to parties to be heard following all the procedural aspects and to pass an order within three months from the date of receipt of a copy of this order;

(iii) till such time, let there not be any change on the status of parties;

No costs.

Index : Yes
Internet : Yes

To

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by its Managing Director
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Labour Court
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